HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No. 10068 of 1996

Between:

Bonthaiah

... Petitioner

And

The Commissioner of Land Revenue,
A.P., Hyderabad and others

... Respondents

:: ORDER::

Counsel for Petitioner: Sri S.V.Muni Reddy

Counsel for the Respondents: Government Pleader for Revenue

April 5, 2006

Feeling aggrieved by order dated 1-4-1996 passed by

Commissioner of Land Revenue, Andhra Pradesh, Hyderabad (respondent No.1), the petitioner has filed this petition.

There is no dispute between the parties that the petitioner was allotted land measuring Ac.3-36 cents in Sy.No.185/2 of Vanellore Village, Chittoor District by treating him as a landless person. It is also not in dispute that after four years, Joint Collector, Chittoor cancelled the allotment on the ground that the same had been made in violation of the policy contained in Government Memo No. 134244/VI/88.1, dated 17-12-1988. The petitioner challenged the order of cancellation in Writ Petition No.7398 of 1993, which was dismissed on the ground that he has failed to avail the alternative remedy of appeal. Writ Appeal No. 612 of 1993 filed by the petitioner was also dismissed by the Division Bench on similar grounds. Thereafter, the petitioner filed appeal. He pleaded that the order of cancellation passed by the Joint Collector is vitiated due to violation of rules of natural justice, inasmuch as he had not been served with notice and he was not given opportunity of hearing. He also pleaded that being a landless person he is entitled to allotment of land and the reason assigned by the Joint Collector for cancellation of allotment was legally unsustainable.

By an order dated 1-4-1996, respondent No.1 dismissed the appeal of the petitioner by observing that the allotment had been made in violation of the policy contained in Government Memo dated 17-12-1988, which contemplated utilization of the land for compensatory afforestation and rehabilitation of affected people of Galeru-Nagari Project.

The petitioner has challenged the appellate order on several grounds set out in the petition including the one that the same does not satisfy the test of a speaking order, inasmuch as the plea of violation of rules of natural justice raised by him has not been adjudicated by the respondent No.1.

In the counter-affidavit filed by Sri K.Narasimhulu, the then

Mandal Revenue Officer, Sathyavedu Mandal, Chittoor District, it has been averred that the order of cancellation of assignment was passed after issuing notice to the petitioner. According to Sri K.Narasimhulu, notice issued to the petitioner was received un-served and, therefore, the service was effected by way of affixation.

I have heard learned counsel for the parties and perused the record.

Before proceeding further, I deem it proper to mention that the petitioner has not prayed for setting aside order dated 27-3-1993 passed by the Joint Collector and, therefore, I have refrained from adjudicating on the legality of that order. However, I am convinced that the appellate order is liable to be set aside on the ground of violation of one of the facets of the rules of natural justice, namely, that every quasi-judicial authority must record reasons in support of its order and the reasons should be communicated to the affected persons. The requirement of recording of reasons and communication thereof has been treated as an integral part of concept of natural justice which constitutes an important pillar of the system based on rule of law. This has been highlighted in a series of judgments of the Supreme Court in

Harinagar Sugar Mills v. Shyam Sundar[1], **M.P.Industries Limited v. Union of India**[2], **Bhagat Raja v. Union of India**[3], **Mahavir Prasad Santoshkumar v. State of U.P.**[4], **Travancore Rayons v. UOI**[5], **Messrs Ajanta Industries v. Central Board of Direct Taxes, New Delhi**[6], **Messrs Siemens Engineering & Manufacturing Company v. Union of India**[7], **S.N. Mukherjee v. Union of India**[8], **Charan Singh v. Healing Touch Hospital**[9] **State of Punjab v. Bagh Singh**[10], **State of Orissa v. Dhaniram Luhar**[11], **State of Rajasthan v. Sohan Lal**[12], **Cyril Lasrado v.**

Juliana Maria Lasrado[13], **Mangalore Ganesh Beedi Works v. CIT**[14] and **Manorama Sachan v. Lucknow Development Authority**[15]. In **S.N. Mukherjee v. Union of India** (8 supra) the Constitution Bench of the Supreme Court noticed the legal position obtaining in Australia, England, United States of America, referred to a large number of judicial precedents on the subject and laid down the following proposition:

> "… Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U. S. A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

In **State of Punjab v. Bagh Singh**[10] (supra) the Supreme Court observed:

> "Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the

sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **State of Rajasthan v. Sohan Lal**[12] (supra) the Supreme Court while dealing with the question whether the High Court was required to assign reasons for recording reasons while disposing of petitions filed under Section 378 (3) Cr.P.C. observed:

> "The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. … The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know of the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first appellate court. …"

In **Cyril Lasrado v. Juliana Maria Lasrado**[13] (supra) the Supreme Court considered the same question and held as under:

> "… Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging

the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **Testeels Limited v. N.M. Desai, Conciliation Officer and another**[16], a Full Bench of the Gujarat High Court made a lucid exposition of law on the subject and we can do no better than to reproduce the relevant paragraphs of that judgment, which are as under:

"There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set-up. Our Constitution posits a welfare State in which every citizen must have justice—social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socio-economic justice and remove the existing imbalance in the socio-economic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is well settled and as pointed out by Shah J. in Jaswant Sugar Mills's case, AIR 1963 SC 677 supra, a quasi-judicial decision involves the following three elements:

(1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;

(2) It declares rights or imposes upon parties obligations affecting their civil rights; and

(3) The investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation, of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32. The High Court under Article 226 and the Supreme Court under Article 32 have the power to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons are given, it would not be possible for the High Court or the Supreme Court exercising its power of judicial review to examine whether the administrative officer has made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction."

In the writ petition filed by him, the petitioner has specifically averred that he had challenged order dated 27-3-1993 passed by the

Joint Collector on various grounds including the one that he has not been given opportunity of hearing, but the same has not been considered by the appellate authority. The respondents have tried to meet this ground of challenge by stating that the notice was served on the petitioner by affixation. In my opinion, the questions whether the substituted service of the notice effected by the Joint Collector was legally correct and whether the petitioner could be deemed to have been served with the notice proposing cancellation of the assignment made in his favour ought to have been decided by the appellate authority before dismissing the appeal filed by the petitioner. If the appellate authority was to come to the conclusion that the notice issued by Joint Collector, Chittoor District has not been properly served, then the only course available for the officer concerned was to remand the matter to the Joint Collector for fresh determination of the issue relating to cancellation of assignment made in favour of the petitioner. However, the fact of the matter is that the appellate authority did not even advert to the plea of violation of the rules of natural justice and dismissed the appeal by recording a rather cryptic order, which does not at all satisfy the requirement of a speaking order.

For the reason stated above, the writ petition is allowed. Order dated 1-4-1996 passed by the appellate authority is quashed with the direction that the appeal filed by the petitioner against order dated 27-3-1993 passed by the Joint Collector be decided afresh. The petitioner is directed to appear before the appellate authority on April 24, 2006. The officer concerned is expected to decide the appeal afresh as early as possible but latest by July 24, 2006. It is also expected that the appellate authority shall objectively consider the grounds raised by the petitioner in the memo of appeal and which may be addressed during the course of hearing and decide the same by recording cogent reasons. If the appellate authority comes to the conclusion that order dated 27-3-1993 passed by the Joint Collector

is vitiated due to violation of rules of natural justice, then, it should consider the desirability of remitting the matter to the concerned officer for fresh determination of the issue relating to the alleged illegality committed in the assignment of the land to the petitioner by treating him as a landless person.

G.S. SINGHVI, CJ

April 5, 2006
GRR/vtv

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[1] AIR 1961 SC 1669
[2] AIR 1966 SC 671
[3] AIR 1967 SC 1606
[4] AIR 1970 1302
[5] AIR 1971 SC 862
[6] AIR 1976 SC 437
[7] AIR 1976 SC 1785
[8] AIR 1990 SC 1984
[9] (2000) 7 SCC 668
[10] (2004) 1 SCC 547
[11] (2004) 5 SCC 568
[12] (2004) 5 SCC 573
[13] (2004) 7 SCC 431
[14] (2005) 5 SCC 75
[15] (2005) 9 SCC 425
[16] AIR 1970 GUJARAT 1